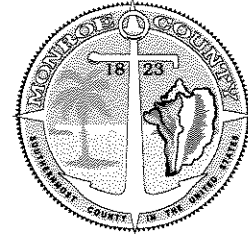


MEMORANDUM
MONROE COUNTY PLANNING DEPARTMENT
We strive to be caring, professional and fair



To: Monroe County Planning Commission

From: Heaven Lashley, Planner *HCL*

Date: February 7, 2007

Through: Aref Joulani, Senior Director of Planning & Environmental Resources
Ralph Goulby, Senior Administrator, Environmental Resources *AD*

RE: *Request for a Variance by Andrew & Mrs. Patricia Wolszczak for
9 Bougainvillea Drive, Raccoon Key, Mile Marker 5*

I REQUEST:

A. Proposal:

The Applicant is requesting a Variance of eight (8) feet, six (6) inches from the required ten (10) foot side yard setback in the Improved Subdivision (IS) District, thereby allowing for a one (1) foot, six (6) inch side yard setback to the Southwest. The granting of the Variance for the southwestern side yard setback would allow the Applicant to extend a roof over an existing concrete driveway and in order to create an unenclosed carport. The proposed carport would be attached to the existing residence.

In addition, the Applicant is requesting a Variance of six (6) inches from the required twenty-five (25) foot front yard setback in the IS District, thereby allowing for a twenty-four (24) foot, six (6) inch front yard setback along Bougainvillea Drive. The granting of the Variance for the front yard setback would bring the existing, nonconforming residence into compliance with the current setback regulations.

B. Location:

- | | |
|--------------------------|---|
| 1. Island & Mile Marker: | Raccoon Key, MM 5 |
| 2. Address: | 9 Bougainvillea Drive |
| 3. Legal Description: | Lot 5, Block 3, Key Haven
5 th Addition |
| 4. RE Number (s): | 00136210.000000 |

1 C. Applicant:

- 2 1. Owner: Dr. Andrew & Mrs. Patricia Wolszczak
3 2. Agent: Manuel E. Garcia, Esq.
4

5 II PROCESS:
6

7 Pursuant to Sec. 9.5-524 of the Monroe County Code (MCC), the Planning
8 Commission is authorized to grant variances for the reduction of non-shoreline
9 setback requirements for front, side and rear yard setbacks.
10

11 The variance application shall be heard at a regularly scheduled meeting of the
12 Planning Commission. Notice, posting and hearing requirements shall be in
13 accordance with MCC Sec. 9.5-524. The Planning Commission's decision shall be
14 in accordance with MCC Sec. 9.5-4. Except for the special accessibility setback
15 variance provided for in MCC Sec. 9.5-523(g), a variance shall only be granted if
16 the standards in MCC Sec. 9.5-523(g) are met.
17

18 III PRIOR COUNTY ACTIONS:
19

20 None applicable to this request
21

22 IV BACKGROUND INFORMATION:
23

- 24 A. Size of Site: 6,250 square feet
25 B. Land Use District: Improved Subdivision (IS)
26 C. Future Land Use Map (FLUM) Designation: Residential Medium (RM)
27 D. Proposed Tier Designation: Tier III
28 E. Existing Vegetation / Habitat: Developed
29
30 F. Community Character of Immediate Vicinity: The community character of the
31 immediate vicinity is single-family residential.
32

33 V REVIEW OF APPLICATION:
34

35 Pursuant to MCC Sec. 9.5-281, the required non-shoreline setbacks for the IS
36 District are as follows: Front yard twenty (25) foot; Rear yard twenty (20) foot; and
37 Side yard ten (10) / fifteen (15) foot (where ten (10) foot is the required side yard
38 for one side and fifteen (15) foot is the minimum combined total of both side
39 yards).
40

41 The subject property has a front yard setback of twenty-five (25) feet along
42 Bougainvillea Drive, a side yard setback of five (5) feet to the Northeast, a side
43 yard setback of ten (10) feet to the Southwest and a shoreline setback to the
44 Northwest. Due to the presence of a canal, the property has no rear yard setback.
45

1 The Applicant is requesting a Variance of eight (8) feet, six (6) inches from the
2 required ten (10) foot side yard setback, thereby allowing for one (1) foot, six (6)
3 inch side yard setback. The granting of a Variance for the side yard would allow
4 the Applicant to construct an extension to the roof over an existing concrete
5 driveway and in order to create an unenclosed carport, which would be attached
6 to the existing residence. Currently, the existing concrete drive is located up to the
7 property line, creating no setback from the neighboring property.

8
9 The Applicant is also requesting a Variance of six (6) inches from the required
10 twenty-five (25) foot front yard setback, thereby allowing for a twenty four (24)
11 foot, six (6) inch front yard setback. The granting of the variance for the front yard
12 setback would bring the existing nonconforming residence into compliance.

13
14 *Pursuant to MCC Sec. 9.5-523(f), the Planning Commission may grant a variance if the*
15 *Applicant demonstrates that all of the following standards are met:*

16
17 A. *The Applicant demonstrates a showing of good and sufficient cause;*

18
19 The Applicant asserts that the carport serves a defined need in providing the
20 residence with covered parking. The Applicant also states that carports are
21 common in the area, and fit in with the surrounding neighborhood, and will not
22 cause distress to surrounding properties.

23
24 Staff concurs that a carport is a benefit to the applicant; however, staff has not
25 found evidence supporting that accommodating the location of a carport is a
26 sufficient cause for the granting of a variance. Staff investigated the applicants
27 claim that carports are common to the area and has not found an issuance of a
28 permit for a carport to any of the surrounding properties.

29
30 B. *Failure to grant the variance would result in exceptional hardship to the Applicant;*

31
32 The Applicant asserts that the not being able to obtain this variance would result
33 in the exceptional hardship of not being able to have covered parking.

34
35 Pursuant to MCC Sec. 9.5-4 (E-4), *exceptional hardship* means a burden on a
36 property owner that substantially differs in kind or magnitude from the burden
37 imposed on other similarly situated property owners in the same land use
38 district as a result of adoption of these regulations.

39
40 Staff has found that an exceptional hardship would not result if a variance is not
41 granted. The property has not had covered parking since its construction in the
42 1960s. In addition, many other properties in the area do not have covered
43 parking.

1 C. *Granting the variance will not result in increased public expenses, create a threat to*
2 *public health and safety, create a public nuisance, or cause fraud or victimization of the*
3 *public;*
4

5 The Applicant asserts that the granting of the variance will not result in increased
6 public expenses, create a threat to public health and safety; create a public
7 nuisance or cause fraud; or victimization of the public.
8

9 Staff is concerned about the potential for stormwater to run off the Applicant's
10 property and enter the neighboring property, thus creating a nuisance. The
11 Applicant is proposing to remove one (1) foot, six (6) inches of the existing
12 concrete drive which is currently located up to the property line. This would
13 assist with drainage. However, storm water run-off may be a nuisance even with
14 this proposed reduction.
15

16
18 D. *The property has unique or*
20 *peculiar circumstances, which*
22 *apply to this property, but which*
24 *do not apply to other properties*
26 *in the same zoning district;*
28

30 Staff has found that the
32 subject property does not
34 have any unique or peculiar
36 characteristics that do apply
38 to other lots in the immediate
40 vicinity.
42



43 The lot in question is 62.5 feet by 100 feet, which is a standard size for properties
44 located along Bougainvillea Ave.
45

46 E. *Granting the variance will not give the Applicant any special privilege denied other*
47 *properties in the immediate neighborhood in terms of the provisions of this chapter or*
48 *established development patterns;*
49

50 The Applicant asserts that granting this variance will not provide any special
51 privilege denied other properties in the immediate neighborhood and further
52 asserts that many other properties in the neighborhood have covered parking.
53

54 On April 2nd 1992, the Board of County Commissioners issued Resolution No.
55 355-1992, which upheld a decision by the Monroe County Planning Commission
56 to deny a dimensional variance for the allowance of a carport. The property in
57 question was located at 19 Bougainvillea Avenue, Key Haven Subdivision,
58 Raccoon Key, Florida. Therefore, a similar request by another property owner in
59 the immediate vicinity has been denied.
60

1 F. *Granting the variance is not based on disabilities, handicaps or health of the Applicant or*
2 *members of his family;*

3
4 Staff finds that this variance is not based on any disabilities, handicaps, or health
5 concerns.

6
7 G. *Granting the variance is not based on the domestic difficulties of the Applicant or his*
8 *family; and*

9
10 Staff finds that this variance is not based on any domestic difficulties of the
11 Applicant.

12
13 H. *The variance is the minimum necessary to provide relief to the Applicant.*

14
15 The house was built prior to 1986, pre-FIRM, which is not elevated and cannot
16 have a parking underneath. The carport could only be located in the required
17 side yard setback.

18
19 Staff has not found that accommodating covered parking is sufficient cause to
20 provide relief to the applicant by granting a variance. Prior to 1986 a carport
21 would not have been allowed in the front yard setback of twenty (20) feet and
22 side yard setbacks of five (5) feet.

23
24 VI RECOMMENDATIONS:

25 Staff recommends APPROVAL of the front yard set back to the Planning
26 Commission if the applicant comes into compliance with the side yard setback.

27
28 Based on a review of the application, Staff recommends DENIAL of the side yard
29 variance.

30
31 VII PLANS REVIEWED:

- 32
33 A. Site Plan by Florida Building Consultants, dated August 16, 2005
34 B. Aerial Photography;
35 C. Monroe County Property Record Card; and
36 D. Monroe County Land Use District and Future Land Use Maps